

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3400 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SANMUKHLAL KALYANDAS MISTRY

Versus

STATE OF GUJARAT

Appearance:

MR BHARAT J SHELAT for Petitioner
MS. S.D.TALATI ASSTT.G.P. for Respondent No. 1
MR AT THAKORE for Respondent No. 4
NOTICE SERVED for Respondent No. 5
MR NS DESAI for Respondent No. 6

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/02/98

ORAL JUDGEMENT

This petition pertains to the land S.No. 380

admeasuring 14399 square yards situated at village Katargam, District Surat (hereinafter referred to as "Katargam land"). The land belongs to a public charitable Trust named and styled as "Surat Char Nat Vaishya Mevada Gajjar and Pancholi Samasta Panch" (hereinafter referred to as "the Trust"). The Trust has been in existence since prior to the commencement of the Bombay Public Trusts Act, 1950. Respondent No. 4 herein is the trustee of the Trust. An application for registration of the Trust under the Bombay Public Trusts Act, 1950 was made by one Dhansukhlal Jekishandas Gajjar on 26th December, 1958. In the said application, the Deputy Charity Commissioner, Vadodara was supplied various information in respect of the Trust. It refers to the details of the property owned by the Trust and the object of Trust. It also refers to the mode of appointment of Trustee i.e. by heredity. On 16th February, 1973, the Collector, Surat granted permission to use piece of Katargam land admeasuring 2635.5 square yards for non agricultural purposes on the terms and conditions mentioned therein. One of the terms being the construction should be made on a piece of land admeasuring 2635.5 square meters and rest of the land should be kept open to sky. On 9th August, 1988, respondent No. 4 (hereinafter referred to as "the trustee") transferred a parcel of Katargam land to one "Build", a proprietary concern, and three others by lease for 34 months under a lease deed. Under the said lease deed, the transferees were permitted to raise construction for a monthly rent of Rs. 30,000/-. Before the expiry of the term of the said lease, the trustee approached the Joint Charity Commissioner, Vadodara for a permission to transfer parcel of Katargam land admeasuring 3110.35 square metre to "Build" and three others by lease for 33 years. Under order dated 17th March, 1989 made by the Joint Charity Commissioner, Vadodara, permission sought for was granted.

3. Feeling aggrieved by the action of the Trustee in transferring the parcel of Katargam land to "Build" and others, the petitioners made an application No. 6 of 1988 before the Joint Charity Commissioner, Vadodara under section 50A of the Bombay Public Trusts Act, 1950 to settle a Scheme for management of the Trust. A similar application being Application NO. 32 of 1989 has been made by the trustee also. Both the applications are yet pending before the Joint Charity Commissioner. Pending the said applications, the petitioners have preferred this petition and have challenged the action of the trustee in transferring parcel of Katargam land to "Build" and three others.

4. Learned advocate Mr. Shelat has appeared for the petitioners and has submitted that the trustee has been misusing the Trust Properties and the same are not being utilized in the best possible manner for the benefit of the Trust and the beneficiaries thereof. He has submitted that if the proper publicity were given, the parcel of Katargam land transferred to "Build" and others would have fetched far more revenue. He has further submitted that the Non-Agriculture permission was granted by the Collector, Surat on condition that the construction should be raised only on the piece of land admeasuring 2635.5 square metre and the rest of the land should be kept open to sky. However, in breach of the said condition, construction has been made on much larger area than the one referred to in the non-agriculture permission. He has submitted that the Katargam land being held by the public charitable trust was exempted from the application of Chapter III of the Urban Land (Ceiling and Regulation) Act, 1976 by the competent authority. Mr. Shelat has submitted that such exemption can apply only so long as the land continues to be used for the purposes of the Trust. However, in the present case, instead of using the land for the purposes of the Trust, it has been transferred for personal gain. In that view of the matter, exemption granted under section 19(4) of the Act cannot continue to apply. He has submitted that the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 has failed to take action against the trustee for breach of the terms of the exemption granted to it in respect of the Katargam land and has failed to take action for cancellation of the exemption granted in respect of Katargam land. Mr. Shelat has further contended that originally, parcel of Katargam land was transferred to "Build" and others by lease for 34 months alone. However, by subsequent permission granted by the Joint Charity Commissioner, Vadodara, said short term lease has been converted into a long term lease for a period of 33 years. He has submitted that the original 34 months' lease was granted only with a view to circumventing the provisions of the Bombay Public Trusts Act, 1950 and to avoid seeking permission of the Joint Charity Commissioner under the said Act. Said lease deed, therefore, is a fraud upon the Statute and requires to be quashed and set aside.

In my view, present petition preferred under Article 226 of the Constitution of India is not maintainable. The petitioners' application under section 50A of the Bombay Public Trusts Act, 1950 is pending before the Joint Charity Commissioner and the Joint

Charity Commissioner is the competent authority to settle a scheme for the effective management of the Trust and its property and the application of the gains earned by the Trust. Suitable terms can be incorporated in such scheme for effective management of the Trust and its property in the best possible interest of the Trust and its beneficiaries. Further, the non-agriculture permission granted to the Trust by the Collector as far back as in the year 1973 cannot be challenged before this Court in the present petition filed in the year 1992. If at all the trustee has committed any breach of the terms of the non agriculture permission, it is for the competent action to take appropriate authority for breach of the terms of the permission. Similarly, exemption granted in respect of Katargam land under the Urban Land (Ceiling and Regulation) Act, 1976 cannot be challenged before this Court. If at all it is found that the land is not being used for the purposes of the Trust, it would be for the competent authority to take appropriate action against the erring Trustee. Further, there is no material on the records of the matter which would substantiate the allegation made by the petitioners. Whether the transfer of the land by way of lease for 34 months was in the interest of the Trust and its beneficiaries or not is a question of fact which cannot be appropriately decided in a petition under Article 226 of the Constitution. Except the bare say of the petitioners, there is no material on the records to substantiate the averments that the transfer of the land would have fetched far more revenue or that the transfer by lease was not in the interest of the Trust. In the event the lease for 34 months made in favour of "Build" and others is fraudulent and is made with a view to circumventing the provisions of the Statute, such action can as well be challenged before the Charity/Joint Charity Commissioner and the Joint Charity Commissioner shall have power to investigate into the allegations made against the transfer of the parcel of the land and to make suitable orders.

In above view of the matter, neither of the reliefs prayed for by the petitioners can be granted. However, it would be in the interest of justice that the applications made under section 50A of the Bombay Public Trusts Act, 1950 pending before the Joint Charity Commissioner, Vadodara are disposed off expeditiously. It is, therefore, directed that the Joint Charity Commissioner, Vadodara shall dispose off the applications No. 6 of 1988 and 32 of 1989 made under section 50A of the Bombay Public Trusts Act, 1950 pending before him as expeditiously as possible and preferably within six

months from today. The interim order made on this petition and prevailing today shall continue to operate for a period of six months from today. It shall, however, be open to the Joint Charity Commissioner, Vadodara to entertain any application from either of the parties to this petition for suitable modification of the interim relief and to suitably modify the same after affording opportunity of hearing to rest of the parties to this petition. Subject to the aforesaid direction, petition is dismissed. Rule is discharged. Parties to the petition shall bear their own costs.

Vyas*